

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

No. 04-239

CASE NO. 04-239

JUDGE RICHARD H. ALBRITTON, JR.

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**MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
MOTION TO COMPEL SEPARATE STATEMENTS  
OF CANON VIOLATIONS**

**COMES NOW** the **Honorable Richard H. Albritton, Jr.**, by and through his undersigned counsel, pursuant to Judicial Qualifications Commission Rules 9 and 12(a) and Florida Rule of Civil Procedure 1.140(e), and moves this Court for entry of an order dismissing the Notice of Formal Charges or in the alternative, for an order requiring the Judicial Qualifications Commission (the “JQC”) to separate the factual allegations to correspond to the alleged violations of the Code of Judicial Conduct charged against him.

1. The Notice of Formal Charges includes thirty-six (36) paragraphs containing factual allegations concerning the Judge’s conduct. None of the paragraphs refer to any Canon of the Code of Judicial Conduct that he allegedly violated.

2. Following the “Factual Allegations,” the JQC sets forth the “Alleged Violations of the Code of Judicial Conduct,” alleging ten (10) different Canons that the JQC contends the Judge violated. However, the JQC fails to describe the particular act or acts of conduct that are claimed to be the basis for each of the Canon violations.

3. In order to draft a facially sufficient Notice of Formal Charges, the JQC is required to “specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based.” Fla. Jud. Qual. Comm’n R. 6(g). However, the JQC has not specified the essential facts on which each of the ten individual charges are based.

4. Moreover, the Florida Rules of Civil Procedure apply to Judicial Qualifications Commission proceedings unless those procedural rules are inappropriate or contrary to the Judicial Qualifications Commission Rules. Accordingly, the JQC should adhere to the pleading requirements set forth in the Florida Rules of Civil Procedure. Florida Rule of Civil Procedure 1.110(f) states, “each claim [violation] founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . when a separation facilitates the clear presentation of the matter set forth.” See also Anderson v. Dist. Bd. of Trustees of Cent. Fla.

Community College, 77 F.3d 364, 366 (11<sup>th</sup> Cir. 1996) (explaining that the purpose behind Fed. R. Civ. P. 10(b), which contains the exact same language as Fla. R. Civ. P. 1.110(f), is to prevent the filing of a “shotgun” complaint in which it is “virtually impossible to know which allegations of fact are intended to support which claims(s) for relief.”).

5. The Notice of Formal Charges does not comply with Florida Rule of Civil Procedure 1.110(f) or Judicial Qualifications Commission Rule 6(g) because it does not specify the “essential facts” that purportedly support the ten separate Canon violations. Due to the disparate nature of the alleged Canon violations, all ten violations could not be supported by identical factual allegations.

6. Because the JQC has failed to specify which act or acts correspond to each alleged Canon violation, the Notice of Formal Charges is so vague and ambiguous that it is impossible for the Judge to adequately draft a responsive pleading or prepare his defense. For instance, while many of the factual allegations could potentially be subject to a Motion to Dismiss for a failure to state a violation of the judicial Canons, such a motion could not be considered without a clear understanding of which factual assertions pertain to each alleged Canon violation.

**WHEREFORE**, the Judge respectfully requests the Hearing Panel to dismiss the Notice of Formal Charges filed in this proceeding. In the alternative, the Judge respectfully requests this Hearing Panel to enter an order requiring the JQC to amend the Notice of Formal Charges to comply with Florida Rule of Civil Procedure 1.110(f) and Judicial Qualifications Commission Rule 6(g).

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2005, the original of the foregoing Motion to Dismiss, or in the Alternative, Motion to Compel Separate Statements of Canon Violations, has been filed via [e-file@flcourts.org](mailto:e-file@flcourts.org) and furnished by FedEx overnight delivery to:

Honorable Thomas D. Hall  
Clerk  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

Ms. Brooke S. Kennerly  
Executive Director  
Florida Judicial Qualifications Commission  
1110 Thomasville Road  
Tallahassee, Florida 32303

Judge James R. Wolf  
Chairman, Hearing Panel  
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